TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 287

GERYS DESSALERNOS, PETITIONER,

vs.

JOSEPH SAVORETTI, DISTRICT DIRECTOR OF UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, MIAMI, FLORIDA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 17, 1957
CERTIORARI GRANTED OCTOBER 14, 1957

Supreme Court of the United States

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[fol. A] [Caption omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

ACTION FOR DECLARATORY JUDGMENT

No. 6080-M-Civil

GERYS DESSALERNOS, Miami, Florida, Plaintiff,

v.

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida, as Agent for HERBERT BROWNELL, Attorney General of the United States, Defendant.

COMPLAINT—Filed February 21, 1955

The plaintiff, Gerys Dessalernos, respectfully alleges:

1. That this is an action for declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review pursuant to the Administrative Procedure Act (5 U.S.C. 1001, et seq.) and the Immigration and Nationality Act (8 U.S.C. 1252).

2. The plaintiff is a native and citizen of Greece, resident in Miami, Dade County, Florida.

3. The defendant is resident in Miami, Dade County, Florida, and is the District Director of the United States [fol. 2] Immigration and Naturalization Service, and as such charged with the statutory duty to carry out the powers of the Attorney General of the United States relating to the deportation of aliens from the United States.

4. The plaintiff entered the United States on March 11, 1947, at Philadelphia, Pennsylvania, as a seaman and has

resided illegally in the United States since that date, without interruption.

5. On or about June, 1954, the plaintiff submitted himself to deportation proceedings before the United States Immigration and Naturalization Service and requested that his status be adjusted to that of a permanent resident by an application for suspension of deportation under the provisions of 8 U.S.C. 1254(a)(1).

6. On September 1, 1954, the plaintiff received notice that his application for suspension of deportation under this section had been denied for the reason that it had been determined in a hearing that he was subject to deportation under the provisions of 8 U.S.C. 1251(a)(5) for failure to submit his annual address report card. The Special Inquiry Officer reasoned, as a result thereof, that he would have to prove eligibility for suspension of deportation under 8 U.S.C. Section 1254(a)(5) as being deportable on a status acquired subsequent to his entry.

7. Section 1254(a)(5) provides that the person qualifying for suspension of deportation under that section must have ten years of continuous residence in the United States immediately following the commission of an act or assump- [fol. 3] tion of a status constituting a ground for deportation. The Special Inquiry Officer found that the plaintiff did not have the required ten years of physical presence in the United States, as specified in that section and was thus ineligible for suspension of deportation.

8. Section 1254(a)(1) of 8 U.S.C. provides:

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

"(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended

by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or"

The plaintiff does qualify under all the provisions of this section, and alleges that the provisions of Section 1254(a) [fol. 4] (5) of 8 U.S.C. do not impair his eligibility thereunder for meeting the statutory qualifications of Section 1254(a)(5) of 8 U.S.C.

9. That on November 26, 1954, the Board of Immigration Appeals upheld the decision of the Special Inquiry Officer and dismissed plaintiff's appeal, finding that the plaintiff must establish eligibility under Section 1254(a)(5) of 8 U.S.C.

10. That the finding that the plaintiff could not be granted suspension of deportation under 8 U.S.C. Sec. 1254(a)(1) is erroneous and contrary to law, and that the plaintiff is entitled to consideration under the provisions of 8 U.S.C. Section 1254(a)(1) and the granting of suspension of deportation upon the proving of eligibility thereunder.

11. That there does exist between the plaintiff and the defendant a judiciable controversy of the interpretation of a statute of the United States.

12. That defendant is threatening to take plaintiff into custody and deport him and, unless restrained, will do so, causing plaintiff irreparable injury:

Wherefore, plaintiff prays for a judgment declaring:

(a) That the deportation order herein was null and void;

(b) That the plaintiff is statutorily eligible for suspension of deportation under the provisions of 8 U.S.C. Section 1254(a)(1);

[fol. 5] (c) That the proceedings be remanded to be reopened and reconsidered pursuant to the order of the Court;

(d) Restraining the defendant from taking the plaintiff into custody and deporting him;

(e) Such other and further relief as may be appropriate in the premises.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

Duly sworn to by David W. Walters, jurat omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

MOTION FOR PRELIMINARY INJUNCTION—
Filed February 21, 1955

The plaintiff, by his undersigned attorneys, moves the Court for an order granting a preliminary injunction against the defendant, restraining the defendant from apprehending and deporting plaintiff pending determination of this suit and until further order of the Court, upon the grounds and in accordance with the prayers set forth in the complaint.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

Certificate of service (omitted in printing).

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING—Filed February 21, 1955

To: The Honorable Jas. L. Guilmartin, United States Attorney, Post Office Building, Miami, Florida.

You Will Please Take Notice that on Thursday, February 24, 1955, at 10:00 A.M., we will call up for hearing before [fol. 7] The Honorable John W. Holland, Chief Judge of the above Court, in his chambers in the Post Office Building, Miami, Florida, the plaintiff's motion for preliminary injunction heretofore filed in the above-styled cause.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

(Certificate of deliverance.)

IN UNITED STATES DISTRICT COURT

ORDER GRANTING PRELIMINARY INJUNCTION—
March 1, 1955

Upon consideration of the complaint, motion for preliminary injunction, and arguments of counsel for plaintiff and defendant, and it appearing that the deportation of the plaintiff is imminent and that he would suffer irreparable damage by reason thereof, it is

Ordered, Adjudged and Decreed that plaintiff's motion for preliminary injunction be, and the same is hereby, granted, and the defendant is herewith restrained from removing plaintiff from the jurisdiction of this Court for a period of not to exceed ten (10) days from the date hereof, or until further order of this Court.

[fol. 8] Done and Ordered in Chambers, this 1st day of March, A. D. 1955, at Miami, Florida.

John W. Holland, Chief Judge.

(Certificate of service.)

IN UNITED STATES DISTRICT COURT

MOTION FOR SUMMARY JUDGMENT—Filed March 9, 1955

The plaintiff, Gerys Dessalernos, by his undersigned attorneys, hereby moves the Court to enter a summary judgment for the plaintiff in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure on the ground that the pleadings and affidavit attached hereto, marked "Exhibit A", show that there is no genuine issue of fact, and that the plaintiff is entitled to ujdgment (sic) as a matter of law.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

(Certificate of service.)

[fol. 9] AFFIDAVIT OF DAVID W. WALTERS

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, David W. Walters of Walters, Moore & Costanzo, attorneys for the plaintiff, Gerys Dessalernos, who, being by me first duly sworn on oath, deposes and says as follows:

That he is attorney for the plaintiff in the above-styled cause; that he did receive from the Board of Immigration Appeals the attached decision, dated November 26, 1954, which decision is the final administrative decision in the deportation proceedings of Gerys Dessalernos; that application was made for suspension of deportation on behalf of the plaintiff under the provisions of Section 244(a)(1) of the Immigration and Nationality Act, but that the plaintiff's application was not considered under the provisions of that section, and he was erroneously forced to meet the requirements of Section 244(a)(5), despite his pleas to the contrary; that plaintiff has no other administrative remedies available to him, and he has exhausted all admin-

istrative remedies in his appeal to the Board of Immigration Appeals.

Further affiant sayeth not.

/s/ David W. Walters.

Subscribed and sworn to before me this 8th day of March, A. D. 1955.

/s/ Irene S. Driver, Notary Public, State of Florida at Large.

(Notary Seal.)

My commission expires Sept. 18, 1955.
Bonded by American Surety Co. of N. Y.

[fol. 10] PLAINTIFF'S EXHIBIT "A" TO MOTION FOR SUMMARY JUDGMENT

U. S. Department of Justice
Board of Immigration Appeals.

Nov 26 1954

File: 1200-54817—Seattle

In Re: Gerys Dessalernos

In Deportation Proceedings.

In Behalf of Respondent:
David W. Walters, Esquire
1409 Biscayne Building
Miami 32, Florida

Charges:

Warrant: Immigration and Nationality Act of 1952—Seaman, failed to comply with conditions of admission.

Lodged: Immigration and Nationality Act of 1952—Failure to furnish notification of address and other information.

Application:

Suspension of deportation.

Detention Status:
Released on bond.

This case comes forward on appeal from an order entered by a special inquiry officer on September 1, 1954, denying the respondent's application requesting that his [fol. 11] deportation be suspended under the provisions of section 244(a)(5) of the Immigration and Nationality Act of 1952 and directing that he be deported from the United States pursuant to law on the charge stated in the warrant of arrest and on the charge lodged during the hearing conducted under the warrant of arrest.

The respondent, a 43-year-old single male, native and citizen of Greece, has resided continuously in the United States since his admission at Philadelphia, Pennsylvania on March 11, 1947, as a seaman, at which time it was his intention to reship foreign. He has never applied for or been granted an extension of his temporary period of admission. Likewise, he has never been admitted to the United States for permanent residence. The respondent has one brother, a citizen of the United States living in Miami, Florida. He has no dependents in this country. The record reflects that the respondent failed to furnish notification of his address during January 1953 and January 1954 or other information in compliance with the provisions of section 265 of the Immigration and Nationality Act of 1952. The respondent has not established to the satisfaction of the Attorney General that his failure to furnish the aforementioned information was reasonable excusable or was not wilfull. On this record he is clearly subject to deportation on the charge stated in the warrant issued for his arrest on June 4, 1954 and under the provisions of section 241(a)(5) of the Immigration and Nationality Act of 1952, which charge was lodged during the hearing conducted under the warrant of arrest.

[fol. 12] Counsel by brief on appeal asserted that the respondent is eligible for suspension of deportation under the provisions of section 244(a)(1) of the Immigration and Nationality Act of 1952 and that his deportability under section 241(a)(5) of such Act would not impair his eligibility for suspension of deportation under the aforemen-

tioned section 244(a)(1) of the Immigration and Nationality Act. Counsel further asserted that because the respondent is ineligible for suspension of deportation under the provisions of section 244(a)(5), this ineligiblity would not exclude her from establishing eligibility under the aforementioned section 244(a)(1) of said Act. The record clearly shows that the respondent is subject to deportation under the provisions of section 241(a)(5) of the Act of 1952 and he is a member of one of the classes of persons enumerated in section 244(a)(5) of the Immigration and Nationality Act whose deportation may be suspended in the discretion of the Attorney General. In view thereof, his application for suspension of deportation under the Immigration and Nationality Act of 1952 must be considered under section 244(a)(5) of the Immigration and Nationality Act. However, he is ineligible for such relief, since among other things, he does not meet the physical requirements of section 244(a)(5), supra.

After carefully considering all the evidence of record together with counsel's representations by brief on appeal, we find nothing therein that would cause us to make any change in the decision of the special inquiry officer, inasmuch as no request has been made for the alternative relief of voluntary departure. Accordingly, the following order will be entered,

[fol. 13] Order: It is ordered that the appeal be dismissed.

Chairman.

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING ON MOTION FOR SUMMARY JUDGMENT—
Filed March 9, 1955

To: The Honorable Jas. L. Guilmartin, United States Attorney, Post Office Building, Miami, Florida.

You Will Please Take Notice that on Monday, May 23, 1955, at 2:00 P.M., we will call up for hearing before The Honorable John W. Holland, Chief Judge of the above Court, in his chambers in the Post Office Building, Miami,

Florida. the plaintiff's motion for summary judgment heretofore filed in the above styled cause.

Walters, Moore & Costanzo, Attorneys for Plaintiff,
by /s/ David W. Walters.

(Certificate of service.)

[fol. 14] IN UNITED STATES DISTRICT COURT

ANSWER—Filed May 10, 1955

Comes now the defendant in answer to the Declaratory Judgment herein and says:

1. That the Plaintiff is an alien.

2. That the Plaintiff was ordered deported and said order of deportation was entered after a deportation hearing was conducted in accordance with the laws and regulations. Official deportation record No. 1200-54817-Seattle is attached to this answer and made a part hereof. It is requested that such record be returned to the defendant at the conclusion of these proceedings.

3. The Defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 6 and 7.

4. In answer to Paragraph 5, the Defendant is without knowledge or information concerning the truth or falsity of the allegations contained in said paragraph.

5. Defendant admits the allegations contained in Paragraph 8, but denies those alleging the impropriety of the administrative denial of petitioner's application for suspension of deportation.

6. Defendant admits the allegations contained in Paragraph 9, but denies the allegations contained in paragraphs 10 and 11. The deportation record contains adequate [fol. 15] evidence to support the findings of the Attorney General in that the Plaintiff is subject to deportation under the provisions of Section 241(a)(5) of the Immigration and Nationality Act of 1952 and that he is a member of

one of the classes of persons enumerated in Sections 244 (a)(5) of the Immigration and Nationality Act.

7. Defendant further says that the Plaintiff's application for suspension of deportation under the aforesaid act must be considered under Section 244(a)(5) Immigration and Nationality Act.

8. Defendant further says that the Plaintiff is ineligible for the aforesaid relief since, among other things, he does not meet the physical requirements of Section 244(a)(5), supra.

James L. Guilmartin, United States Attorney, by /s/ Anthony S. Battaglia, Assistant U. S. Attorney.

ATTACHMENT TO ANSWER

United States Department of Justice, Immigration and Naturalization Service, Seattle, Washington

Gerys Dessalernos, Respondent
1200-54817

Warrant Hearing:

Date: July 20, 1954.

Place: Seattle, Washington.

Special Inquiry Officer: George S. Dailey.

Stenographer: Marie Mielke.

[fol. 16] Alien's Representative: Jeffrey Heiman, Attorney at Law, 530 1411-4th Avenue Bldg., Seattle, Washington.

Special Inquiry Officer to Respondent:

Q. What language do you speak and understand?
A. I understand English.
Q. This hearing is convened pursuant to notice. The hearing will be conducted in the English language. What is your name?
A. Gerys Dessalernos.

Q. Will you stand and be sworn? (complies) Do you solemnly swear that all the statements you will make will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. You are advised that in this matter you may be represented by counsel who may be an attorney at law or any other person authorized to appear before the Immigration and Naturalization Service and the Board of Immigration Appeals. Such representation must be at your own expense. Do you desire to be represented?

A. Yes.

Q. Do you have your attorney with you?

A. That's right.

By Special Inquiry Officer to Counsel:

Q. Will you give your name, sir, for the record?

A. Jeffrey Heiman, 411 4th Avenue Building, Seattle, Washington.

Q. Have you been admitted to practice before this Service?

A. I have.

[fol. 17] Q. Have you filed notice of appearance in this case?

A. I have.

Q. Mr. Dessalernos, is it your wish that Jeffrey Heiman represent you in this matter?

A. Yes.

Q. I have here a warrant of arrest of an alien which charges that Gerasimos Desalernos, alias Jery Desalernos, alias Gerys Dessalernos who entered the United States at Philadelphia, Pennsylvania, March 13, 1947 is charged with being illegally in the United States in that after admission to the United States as a nonimmigrant, to wit, a seaman under section 3(5) of the Immigration Act of 1924, he failed to comply with the conditions of such status. Do you understand this charge?

A. I understand.

Q. Have you been served with this warrant of arrest as shown on the reverse at Seattle, Washington, on June 28, 1954?

A. Yes.

Q. Were you given a copy of the warrant of arrest at that time?

A. Yes.

Q. You are advised that you will have a reasonable opportunity to examine the evidence against you, to present evidence in your own behalf, and to cross-examine any witnesses presented by the Government. Do you understand?

A. Yes.

Special Inquiry Officer to Counsel:

Q. Counsel, have you had an opportunity to examine the warrant of arrest?

A. Yes.

[fol. 18] By Special Inquiry Officer to Respondent:

Q. This warrant will be entered in the record and marked Exhibit 1. Have you ever been known by any name other than Gerys Dessalermos?

A. Over here that is the name. For shorter they used Jery. In the old country—Gerasimos.

Q. Have you ever used any other name?

A. No.

Q. When and where were you born?

A. In the village of Karia Kefalinias, Greece, on May 20, 1911.

Q. How old are you now?

A. 43.

Q. When and where did you last enter the United States?

A. In Philadelphia, Penn., March 17, 1947 or 13th.

Q. On what ship?

A. Aristocratis.

Q. I have here form I-405A showing the entry of one Gerasimos Desalernos on March 11, 1947 on the Aristocratis at Philadelphia, Penn.

A. March 11?

Q. Yes.

A. I had the permission of the captain, I think it was, in those papers and the permission after two or three days after we (sic) came to relieve me from the ship.

Q. I show you this record and ask you if it relates to your last entry into the United States?

A. That's right.

Q. This is your record?

A. That's right.

Q. Form I-405A showing arrival of Gerasimos Desalernos will be entered into the record and marked Exhibit 2. Subsequent to your arrival on March 11, 1947 as a 3(5) [fol. 19] seaman, did you ever go to an Immigration office and ask permission to remain in the United States?

A. No.

Q. Did you ever apply for an extension of your stay?

A. No.

Q. At the time you entered, you were admitted only for the time the vessel was to remain in port or not to exceed 29 days. Was that your understanding?

A. Yes, for 29 days.

Q. What was your intention when you left the boat?

A. My intention was to go and see my brother. That's the only person I have in this world—the only close relative.

Q. Did you intend to ship out again?

A. I didn't know this time. I wanted to see my brother. I had some troubles and I went to the hospital and I planned later to go again to the ships but it take time. A month after was there—after I was in the hospital—I stayed in the hospital two weeks—when I went out I felt a little weak. Always I say, "Later".

Q. What was your intention on the day you left the vessel? Did you intend too (sic) remain permanently in the United States or did you intend to visit your brother and then leave again?

A. I had in mind to visit my brother and leave.

Q. Had you been in the United States before you came March 11, 1947?

A. No.

Q. How long had you been a seaman at the time you came in 1947?

[fol. 20] A. I was just on the ships for working a part of a year but in 1940—I don't remember exactly—it is in my seaman's book—but altogether I think it was a year and a half and three years. I wasn't a real sailor. I liked to

go on ships for a little time. Usually I was working in the capitol—Athens.

Q. What was your occupation in Athens before going to sea?

A. A big store, candy store, bread, bakery.

Q. What did you do?

A. I did everything. I start baker. Later I was the chief steward of the store and later I was working a year and a half a bookkeeper.

Q. What was your last address?

A. The same building. I was living with the owner.

Q. What address was that?

A. They change the name of the store. That's on—it was University Avenue 57 in Greece, Banepistimiou, 57, Athens.

Q. How long had you been living at that address?

A. I went there many times during the war time—about six months the last time.

Q. Where was your father born?

A. The same village I was born.

Q. What was his name?

A. Fotios Desalarmos.

Q. Of what country was he a citizen?

A. He was a Greek citizen.

Q. Did he ever become a citizen of the United States?

A. No, he stayed here 13 years but he was not a citizen.

Q. When was he in the United States?

A. From 1911 to 1934 in San Francisco and Vallejo.

Q. He came after you were born?

[fol. 21] A. Just after.

Q. But he never became a citizen?

A. No.

Q. Did your mother ever come to the United States?

A. No, never.

Q. What was her name?

A. Anna.

Q. Where was she born?

A. In Psilithrias, Greece.

Q. Did she ever become a citizen of the United States?

A. No.

Q. Are your parents both living?

A. No, both have passed away.

Q. Do you have any friends or relatives in the United States?

A. Yes, I got many.

Q. What relatives do you have in the United States?

A. My brother, Paul Dessalermos, Miami.

Q. Is he a citizen of the United States?

A. Yes, since 1924.

Q. Do you have any other brothers or sisters?

A. No, just one.

Q. Any brothers or sisters in Greece?

A. No, I got close relatives in Port Angeles.

Q. Are you married or single?

A. Single.

Q. Have you ever been registered under the Alien Registration Act of 1940?

A. No.

Q. Did you ever know that aliens were supposed to register and be fingerprinted in the United States?

A. I knew.

[fol. 22] Q. Why did you not present yourself and be registered and fingerprinted?

A. I sent a card. I see in the newspaper every alien must send a card to the Immigration office—to Washington—and I take one card and I mail it to Washington in 1952. They asked me for my registration number. I write down no registration number. The whole trouble was they sent me a letter to fill out. They ask some questions. I went to my lawyer. They say you open the business, you have to go through now. He says come the next day so I went over there. They wrote the paper the Immigration office sent me. All right, he say, we will ask for another. The lawyer's girl brought the letter. I said I go to the postoffice (sic). I didn't have any answer and next year the local Immigration man asked me to come to his office and don't be scared and we will see what is going in your case but I know I have to be deported and I run.

Q. You say you made out this card in 1952? In January 1952?

A. Yes.

Q. Where were you living at that time?

A. I was living in Miami, 131—24 Road with my brother.

Q. You saw this lawyer then about when?
A. I had the letter February 1952, I think.
Q. And when did you leave Miami?
A. Next year exactly 13 months later.
Q. What date?
A. 1953, the 4th day of February.
Q. Did you make up an address card at the post office in January 1953?
A. No, sir, not any more.
Q. Why not?
[fol. 23] A. Because I was scared they would catch me and deport me.
Q. You say that you then received a letter from the Immigration in February?
A. In February 1952 I had a letter.
Q. But not in February 1953?
A. Just a minute—in February 1953 the next year.
Q. But you didn't go to the Immigration office?
A. I don't go.
Q. You ran off from Miami instead?
A. Yes.
Q. Where did you go?
A. To Port Angeles.
Q. How long have you been in Port Angeles?
A. Ever since.
Q. In 1954 did you go to the post office and register as required by law?
A. No.
Q. Do you know that you were required to go to the post office and register?
A. Just—I did.
Q. Why did you not go and do what the law said you should do?
A. I was waiting—something might happen—they leave me stay here—I would like to stay here.
Q. You didn't go in 1954 because you were afraid the Immigration would catch you?
A. Yes.
Q. In 1952 you turned in a card?
A. Yes.
Q. In 1953 and 1954 you did not?
A. Yes.

Q. And the reason you did not was because you were afraid the Immigration would catch up with you and deport you—am I stating that correctly?

[fol. 24] A. Yes, that's right.

Q. In other words, to make sure that I have this correctly, you knew the law required that you do this registration in 1953 and 1954 but you did not do it because you were afraid you would be apprehended?

A. That's the truth even if it is against me.

Q. You understood the question?

A. Yes.

Q. The only thing I can figure out from this is that you wilfully failed to send in these reports, that you didn't send them in for fear that you would be apprehended. That was wilful on your part?

A. I didn't send them in.

Q. On purpose?

A. Sure.

Q. On the basis of the evidence adduced so far in this hearing I now lodge the additional charge upon which I find that you are subject to deportation under section 241 (a)(5) of the Immigration and Nationality Act in that you failed to furnish notification of your address or other information in compliance with the provisions of section 265 and you have not established that such failure was reasonably excusable and was not wilful. Do you understand this charge?

A. Yes.

Q. Do you desire Mr. Heiman to represent you on this charge also?

A. Yes.

Q. Do you desire any additional time to prepare a defense on this charge.

By Counsel:

I think I would prefer additional time.

[fol. 25] Special Inquiry Officer to Counsel:

Q. How much additional time would you desire?

A. Well, what would your convenience be with reference to it?

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[redacted]

(20) Is spouse employed? ..... (Yes) ([redacted] employed, give salary and place of em[redacted]

(21) For the last 10 years I have resided as follows (Set forth the information for the period you have resided in the United States if less than 10 years):*

Street and Number—City or Town—State	From— Month	From— Year	To— Month	To— Year
112 SW 10th Ave., Miami, Florida	March	47	May	50
Broadway & 87th St., New York, N.Y.	May	50	June	50
137th & Amsterdam Ave., 5th floor, NY., NY	June	50	Dec.	50
131 SW 24th Road, Miami, Florida	Dec.	50	Feb.	52
68th SW 21st Road, Miami, Florida	Feb.	52	Feb.	53
217 West 4th St., Port Angeles, Wash.	Feb.	53	March	54
413 West 2nd St., Port Angeles, Wash.	March	54	Present	date

(22) During my residence at the places in the United States named above I was employed by the following-named persons or firms:*

Full Name of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From— Month	From— Year	To— Month	To— Year
Biscayne Bar & Restaurant Miami, Florida (Paul Desselernos & Jerry Anninos)	$40.	Cashier & Allround man	6 & 12	48 50	5 1	50 53
Peninsula Plywood Corp. (Mr. Enar Erickson, General Manager) Port Angeles, Wash.	$80.	Woodworker	5	53	Present date	

(23) If self-employed, describe nature of business, name under which business is conducted, and net income derived therefrom .....

am not
(24) I (am/am not) married. The name of my wife or husband is .....
We were married on ..... (Month) (Day) (Year) at ..... (City or town) (State)

Biscayne Bar & Restaurant $40. Cashier & 6 48 5 50
Miami, Florida Allround man & 12 50 1 53
(Paul Desselernos & Jerry Anninos)
Peninsula Plywood Corp. $80. Woodworker 5 53 Present date
(Mr. Enar Erickson, General Manager)
Port Angeles, Wash.

(23) If self-employed, describe nature of business, name under which business is conducted, and net income derived therefrom .....

am not
(24) I (am/am not) married. The name of my wife or husband is .....
We were married on ..... (Month) (Day) (Year) at ..... (City or town) (State)

(25) She or he was born at ..... (City or town) (State or country)
on ..... (Month) (Day) (Year), arrived in the United States at ..... (City or town)
on ..... (Month) (Day) (Year), for permanent residence, and now resides at ..... (City or town)
..... (State or country); was ..... naturalized on ..... (Month) (Day) (Year)
at .....

(26) I have not (Have) (Have not) been previously married. (If previously married, give facts relative to name of spouse, and manner and date of termination of each such marriage) .....

(27) My spouse ..... (Has) (Has not) been previously married. (If spouse previously married, give facts relative to name of spouse and manner and date of termination of each such marriage) .....

*Use a separate sheet for additional entries.

Q. Would 2 weeks be sufficient?

A. There is a possibility of me being in San Francisco. I would like this week better—any time during the week starting the 8th.

Q. Shall we make it 10 a.m., on the 10th?

A. Three weeks would be better.

Q. That would be 1 p.m., August 10, 1954?

A. Yes.

Special Inquiry Officer to Respondent:

Q. What is the state of your finances, Mr. Dessalermos?

A. Right now I got in the bank $1,500.

Q. Do you own any property?

A. I have a $500 bond—about $200 sporting goods.

Q. Do you own any real estate?

A. No.

Q. Do you have any one in the United States dependent upon you for support?

A. No.

Q. I see that you have an application for suspension of deportation under section 244 of the Immigration and Nationality Act prepared. Do you desire to make application for suspension of deportation at this time?

By Counsel:

Now, I desire at this time to ask for a continuance until August 10 at 1:00 p.m. in order to prepare my application for suspension and consideration of the lodged charge and further defense.

[fol. 26] By Special Inquiry Officer:

The hearing in this matter will now be continued until August 10 at 1:00 p.m.

I certify the foregoing to be a true and correct transcript of my shorthand notes.

Marie Mielke, Stenographer, Bk 868.

ATTACHMENT TO ANSWER

Form I-200

United States Department of Justice.
Immigration and Naturalization Service.
(Rev. 12-24-52)

Warrant.
For Arrest of Alien.

United States of America.
Department of Justice.

Immigration and Naturalization Service.

File No. 1200-54817

No. E-1 48 768

To Officer in Charge, Immigration and Naturalization Service, Port Angeles, Washington

Or to any officer in the service of the United States Immigration and Naturalization Service:

Whereas, from evidence submitted to me, it appears that the alien Gerasimos Desalernos, alias Jery Desalernos, alias Gerys Dessalernos who entered this country at Philadelphia, Pennsylvania, on the 13th day of March, 1947, [fol. 27] has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: Section 241(a)(9) of the Immigration and Nationality Act, in that, after admission to the United States as a non-immigrant, to wit, a seaman, under section 3(5) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appro-

priation "Salaries and Expenses, Immigration and Naturalization Service, 1954."

For so doing, this shall be your sufficient warrant. Witness my hand and seal this 4th day of June, 1954.

/s/ John P. Boyd, District Director, Seattle District.
(Seal)

Received I & N Service Spokane, Wash. 1954 Jun 10 AM 10:10.

Office at Seattle, Washington
Date June 18 1954

[fol. 28] Warrant for Arrest of Gerasimos Desalernos served by me at Seattle, Washington, on June 28, 1954, at 11:00 AM Alien was then informed as to cause of arrest, the conditions of release, advised as to right of counsel and furnished with a copy of this warrant.

/s/ Gordon F. Davidson (Signature of Officer)
Investigator (Title)

Jun 15 1954 Received IMM & NATZ Service Port Angeles.

30

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

PREPARE THIS FORM IN DUPLICATE

Take or mail to—
IMMIGRATION AND NATURALIZATION SERVICE

$25.00 FEE PAID No. 226
Immigration and Naturalization Service
Seattle, Wash. M&F
Date 8-10-54 Accepted by

Do not write above this line—Read carefully and follow the instructions on page 6 hereof

(1a) I, GERYS DESSALERNOS (Name), an alien, believe that I am in the United States in violation of the immigration laws for the following reason(s): I came for visit with my brother [illegible], Florida, as he is the only close relative I have living; I had [illegible] in hospital while here and In order to pay off debt for this hospital expense I stayed in Miami and worked. I had 29 days permit when I entered the U.S.A. as a seaman.

(1b) I hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. This application is submitted together with two photographs of myself, the documents required by regulations of this section, and the fee in the sum of $25.

(2) I believe that I am eligible for suspension of deportation because such deportation would result in exceptional and extremely unusual hardship to myself and/or to my [illegible] (Husband, wife, father, mother, child, children) who is/are ☐ citizen(s) ☐ lawful permanent resident(s) of the United States; and I have been physically present in the United States since March 11, 1947.

PLEASE DO NOT SUBMIT CASH FEE
Gerys Dessalernos
A POSTAL, EXPRESS OR BANK MONEY ORDER OR EQUIVALENT IS PREFERRED

(3) My name given at birth was Gerasimos Fotios Dessalernos

(4) I have been known by the additional following name: [illegible]

(5) I was born at Karia Kerasinias, Greece (Place and country) on May 20, 1921 (Month, day, year)

(6) My nationality is Greek (Country of which citizen or subject)

(7) My sex is Male My personal description is as follows:

Height 5 (Feet) 9 (Inches) olive (Complexion) blue (Color of eyes) [illegible] (Color of hair)

(8) I now reside at 413 East 2nd Street, (Number and street) Port Angeles, (City or town) Clallam, (County) Washington

(9) My occupation is woodworker

(10) My father's full, true name is Fotios Constantino Dessalernos He was born in Greece (Country) He is a citizen of Deceased (Country)

(11) My mother's full, true name is Anna Panagies Antipas Dessalernos She was born in Greece (Country) She is a citizen of "Deceased" (Country)

Exhibit 3

[redacted] IS RELATIVE TO YOUR FIRST ENTRY TO THE UNITED STATES

[redacted] have visited the United States on only one occasion, it will not be necessary to answer questions 13 and 13)

(12) I first entered the United States under the name of _____ (First) (Middle) (Last)

on _____ (Month) (Day) (Year) at the port of _____ (Seaport or land border port) on the

vessel _____ (Name of vessel) (If name of conveyance was other than by vessel, describe such conveyance)

I was coming to remain _____ (State whether temporarily or permanently)

(13) I _____ (Was) (Was not) inspected and admitted by an immigrant inspector.

(If entry occurred at other than a regular seaport or land border port, describe the circumstances of entry (including date) as accurately as possible, naming the State in which, and the city or town at or near which you entered)

QUESTIONS 14 AND 15 RELATE TO YOUR LAST ENTRY TO THE UNITED STATES

(14) I last entered the United States under the name of Gerys (First) Dessalernos (Middle) (Last)

(3) on March 15, 1947 (Month) (Day) (Year) at the port of Philadelphia (Seaport or land border port) on the

vessel Aristocrat (Name of vessel) (If name of conveyance was other than by vessel, describe such conveyance)

(15) I was admitted as a [redacted] (Insert visitor, seaman, transitgt, student, permanent resident, or other)

for period of time to expire on 29 days from date of entry (Insert date of period for which admitted) My last extension of stay in the

United States expired on 29 days from date of entry (Date)

(If entry occurred at other than a regular seaport or land border port, describe the circumstances of entry (including date) as accurately as possible, naming the State in which, and the city or town at or near which you entered)

(16) Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates:

DEPARTED		RETURNED		INSPECTED AND ADMITTED (Alienage) (Yes or No)
Port	Date (Year—Month—Day)	Port	Date (Year—Month—Day)	

vessel Aristocrat

(15) I was admitted as a [redacted] (Insert visitor, seaman, transitgt, student, permanent resident, or other)

for period of time to expire on 29 days from date of entry (Insert date of period for which admitted) My last extension of stay in the

United States expired on 29 days from date of entry (Date)

(If entry occurred at other than a regular seaport or land border port, describe the circumstances of entry (including date) as accurately as possible, naming the State in which, and the city or town at or near which you entered)

(16) Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates:

DEPARTED		RETURNED		INSPECTED AND ADMITTED (Alienage) (Yes or No)
Port	Date (Year—Month—Day)	Port	Date (Year—Month—Day)	

If you have never departed from the United States since your original date of entry, insert "No departures" in space below.

No departures

(17) I (have) (have not) been served with a final order of deportation issued pursuant to the Immigration and Nationality Act.

have not

(18) My assets consist of the following:

Cash, including amount in bank	$ ~~2000.00~~ 1750.00	
(3) Bonds (purchase value)	$ 500.00	
Other . . . Sport equip.	$ 200.00	Total $ ~~2700.00~~ 2450.00

(19) The assets of my spouse consist of the following:

Cash, including amount in bank	$	
War bonds (purchase value)	$	
Other	$	Total $

[fol. 29]

attachment to answer

Form 508-A
U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

NAME Gerasimos DESALERNOS, Gera...mos

PORT OF ENTRY	CREW LIST NO	LINE NO
Phila, Pa.	2	3

DATE	S. S.	LINE
Mar. 11, 1947.	S.S. "ARISTOCRAT"	--

CERTIFICATE OF ADMISSION OF ALIEN
SEAMAN OR AIRMAN

1200-54817-Port Angeles, Washington.

I HEREBY CERTIFY that this is a correct record and statement of facts relative to the arrival in the United States of the alien named herein.

James J. Manning
SIGNATURE

June 7, 1954.
DATE

Clerk
TITLE

LICENSE NO.	CREW LIST D
-	Hamilton, Bermuda, Mar 5, 1947.

VESSEL OR AIRCRAFT ARRIVED FROM
St. Nazaire, France. 2/13/47

AGE	SEX	CITIZEN OF	RACE	ABLE TO
36	M.	Greece	Greek	Yes

MEMBER OF CREW LAST PRECEDING VOYAGE TO U. S.
No first trip.

POSITION	LENGTH OF SERVICE (Yrs.)
Baker.	11 Years

SHIPPED OR ENGAGED WHEN	WHERE	WHETHER TO BE PAID OFF OR DISCHARGED AT PORT OF ARRIVAL
2/12/47.	St. Nazaire,	Yes

HEIGHT	WEIGHT	PHYSICAL MARKS OR DISEASE
5'8"	160	Nil

HEAD TAX PAID	RECORD OF LEGAL ADMISSION FOR PERMANENT
-	-

ADMITTED SEC	ACT	FOR PERIOD OF
3-(5).	1924.	remains in U.S. ports not to exceed 29 DAYS

This vessel

REPORTED ON FORM 1689 (OLD 689) DATED Phila, Pa. 1947.

AS DISCHARGED

REMARKS *- Local Agent Texas Transport & Terminal Co.

29

21

[redacted]

(28) I have 32 child[redacted] whose names, ages, places of birth, places of [redacted], wages, and earnings [redacted]

Name	Age	Place of Birth	Now Residing At—	Address	[redacted]

As to these children who were not born in the United States, give date and place of arrival in the United States including full details as to the manner and terms of their admission to this country .....

(29) I did not (Did) (Did not) register under the Alien Registration Act of 1940, or section 262 of the Immigration and Nationality Act, or in connection with my application for a visa. The number of my Alien Registration Receipt Card is No. .....

I have (Have) (Have not) submitted an address report as required by the amendment to the Alien Registration Act effective September 23, 1950, and section 265, Immigration and Nationality Act. in 1952 only.

(30) I have not (Have) (Have not) been the recipient of public or private relief or assistance.

If you have, give full details including date, place, and amount received .....

(31) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft laws? Yes ☐ No ☒ If "Yes," give date ..... Were you ever exempted from service because of conscientious objections ☐ alienage ☐ other ☐

(32) If you ever served in the Armed Forces of the United States, state branch ..... (Army, Navy, etc.)

Date of Entry ..... Date of discharge ..... Type of discharge ..... (Honorable, dishonorable, etc.)

Reason for discharge .....

or in connection with my application for a visa. The number of my Alien Registration Receipt Card is No. .....

I have (Have) (Have not) submitted an address report as required by the amendment to the Alien Registration Act effective September 23, 1950, and section 265, Immigration and Nationality Act. in 1952 only.

(30) I have not (Have) (Have not) been the recipient of public or private relief or assistance.

If you have, give full details including date, place, and amount received .....

(31) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft laws? Yes ☐ No ☒ If "Yes," give date ..... Were you ever exempted from service because of conscientious objections ☐ alienage ☐ other ☐

(32) If you ever served in the Armed Forces of the United States, state branch ..... (Army, Navy, etc.)

Date of Entry ..... Date of discharge ..... Type of discharge ..... (Honorable, dishonorable, etc.)

Reason for discharge .....

(33) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☒ Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes ☐ No ☒

(34) I [redacted] attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of this country.

(35) List all organizations, societies, clubs, and associations, past or present, in which you have held membership, whether in the United States or a foreign country, and the periods and places of such membership:

Seaman's Union of Perf[redacted] Greece, 1946
Woodworker's Union, Port Angeles, Washington, since June 1953.
Order of Moose, Port Angeles, Washington Chapter since Jan., 19[redacted]
Salmon Club, Port Angeles, Washington, since April, 1953.

(36) I [redacted] (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following .....

34

[redacted]

(37) To the best of my knowledge a[redacted] I am not a member of any of the follow[redacted]es of individuals deportable under the immigration laws except as [redacted]n in item (1a) above: Persons convicted [redacted]committing the commission of a crime involving moral turpitude; persons who willfully failed to give the Attorney General written notice of current address; persons convicted of filing an application for registration as an alien containing false statements or for committing a fraud in connection with such registration; persons convicted of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes" approved June 8, 1938, as amended; persons convicted of fraud and misuse of visas and permits or making false statements in documents required by the immigration laws or regulations under section 1546 of title 18 of the United States Code; persons who entered the United States to engage in activities which would be prejudicial to the public interest or would endanger the safety or welfare of the United States; anarchists; persons who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches opposition to all organized government; persons who are members of or are affiliated with the Communist or any totalitarian party of the United States or any State thereof, or of any foreign state or any political or geographical subdivision thereof; or persons who are deportable by reason of any of the activity prescribed by the provisions of the Act of October 16, 1918, as amended, or section 241 (a) (6) of the Immigration and Nationality Act; narcotic drug addicts; persons convicted of violating the narcotic laws; prostitutes, or persons connected with the business of prostitution; persons convicted of possession or carrying an automatic weapon or sawed-off shotgun; persons convicted of violating the provisions of title I of the Alien Registration Act of 1940 of interfering with the military or naval forces of the United States, or of subversive activities against any government in the United States; persons who are undesirable residents by reason of conviction of one of the offenses enumerated in section 241 (a) (17); persons who have unlawfully reentered the United States after having previously departed or been deported pursuant to an order of deportation. If within one of the foregoing classes, explain fully:

(38) I can return to my country of [X] Birth [X] Nationality [X] Last Residence without fear of physical persecution. If unable (Check the appropriate block or blocks)
to return to any of these countries, give reasons

(39) I would be able to arrange a trip outside the United States to obtain an immigration visa. If not, explain:
(Would) (Would not)

[redacted]

persons who are undesirable residents by reason of conviction of one of the offenses enumerated in section 241 (a) (17); persons who have unlawfully reentered the United States after having previously departed or been deported pursuant to an order of deportation. If within one of the foregoing classes, explain fully:

(38) I can return to my country of [X] Birth [X] Nationality [X] Last Residence without fear of physical persecution. If unable (Check the appropriate block or blocks)
to return to any of these countries, give reasons

(39) I would be able to arrange a trip outside the United States to obtain an immigration visa. If not, explain:
(Would) (Would not)

(40) Give names of close relatives in the United States, other than parent, minor child, or spouse
Brother - Paul Dessalernos; Cousins - Pete, Jerry, Angelo, Athena, and Nick Capos; Effie Capos Colompos; Chris, Harry, Speros Dessalernos; and Uncle - John Capos.

IF THIS APPLICATION IS BASED ON EXCEPTIONAL AND EXTREMELY UNUSUAL HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 41 TO 45 MUST BE ANSWERED.

(41) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country

(42) Is father employed? (Yes) (No) If employed, give salary and place of employment

(43) Is mother employed? (Yes) (No) If employed, give salary and place of employment

(44) Assets of father consist of the following:

Cash, including amount in bank	$
War bonds (purchase value)	$
Other	$
	Total $

+ 2 cks

[redacted]

(45) Assets on ____ ____ of the following:

Cash, including amount in bank . . . . . $_____

War bonds (purchase value) . . . . . $_____

Other . . . . . $_____

Total $_____

(46) The following certificates or other documents are attached herewith as a part of this application:

Nature of Document	
(5) Letter Reference Navy Commission	Social Security book with
Seaman book	photograph from Greece -
Affidavit of good record from	Character letter from Pastor
Pros. Attorney -	of Gr. Orthodox Church in
Affidavit from employer in Athens	Florida -
(Taitas Gerakakis) -	Pan-Ply Fed Credit Union pass book
Mr. Ernest Paul Anderson, Police Road 1, Fort Lauderdale, Fla.	
Employment Record	

(Sign here) X Eleni Georgiou

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE A SPECIAL INQUIRY OFFICER FOR HEARING OR FURTHER HEARING IN DEPORTATION PROCEEDINGS.)

I, _____, do swear (affirm) that I know the contents of this application subscribed by me, that the same including the documents appended hereto are true to the best of my knowledge, and that corrections numbered (1) to (5) were made by me or at my request, and that this application was signed by me with my full, true name So Help Me God.

X Eleni Georgiou

Subscribed and sworn to before me by the above-named applicant at Seattle, Wash. this 10 day of August, 1954

George S. Darby

Special Inquiry Officer

INSTRUCTIONS TO THE APPLICANT

1. DEPORTABILITY.—Your statement in question (1c) that you believe you are in the United States in violation of the immigration laws is not binding with respect to your deportability.

2. PREPARATION OF APPLICATION.—A separate application must be executed for each person applying for suspension of deportation. However, all applications from a family unit may be mailed together and may be supported by the same documentary evidence, if practicable. An application in behalf of a child under 14 years of age shall be executed by the parent or guardian.

3. FEE.—A fee of $25 must accompany each application. All remittances should be made payable to "Treasurer of the United States" except that in Guam they should be made payable to "Treasurer of Guam" and in the Virgin Islands to "Commissioner of Finance, Virgin Islands."

4. DOCUMENTS.—In support of your application you may submit any pertinent photographs or reproductions of documentary evidence to prove that you are eligible for suspension of deportation. The originals of such documentary evidence must be brought with you when you are notified to appear for examination on this application. In addition you should submit any temporary entry permit (Form 257a or I-94) issued at the time of your entry.

You must submit official certifications to establish the relationship to those you claim would suffer exceptional and extremely unusual hardship by your deportation, and if such persons are citizens of the United States, evidence of their citizenship. Such documents usually consist of birth, marriage, divorce and death records to establish your relationship. Do not duplicate or photograph a naturalization certificate but bring it with you at the time of hearing.

Documentary evidence of your residence in the United States must be submitted. This may consist of bank books, leases, deeds, licenses, receipts, letters, birth records, church records, school records, employment records, affidavits, etc. The period of residence required varies with the time of entry and grounds of deportation. However, the minimum under those subdivisions of section 244 presently effective is 7 years.

You must prove that you have been a person of good moral character during the entire period of physical presence in the United States required for eligibility for suspension of deportation, and must submit police records covering such period. You must also submit the affidavits of five witnesses, preferably citizens of the United States, and if employed, one from your employer, who can vouch for your good moral character during such period.

5. PHOTOGRAPHS.—You must submit with this application two photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 x 2 inches in size, and the distance from top of head to point of chin should be approximately 1¼ inches. They must not be pasted on cards or mounted in any way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. Snapshots, group, or full length pictures will not be accepted. All of these photographs must be signed by you on the margin and not on the face or the picture.

6. PENALTIES.—Your attention is called to section 1546 of title 18, United States Code, which provides that whoever knowingly makes under oath any false statements in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, shall, upon conviction thereof, be fined not more than $2,000 or imprisoned for not more than 5 years, or both. Your answers to questions in this form may be used as evidence in any proceedings to determine your deportability. False statements made in the United States in connection with any of the applications listed in item 2 of these instructions may subject you to criminal prosecution.

36

[redacted]

[fol. 36] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ANTHONY S. BATTAGLIA—Filed May 10, 1955

Anthony S. Battaglia, at Miami, Dade County, Florida, being first duly sworn, deposes and says:

1. That he is an assistant United States Attorney in and for the Southern District of Florida, and acting upon and in behalf of the United States of America.

2. Affiant further says that to the best of his information and belief, plaintiff herein, a single man, is a native and citizen of Greece, and has resided continuously in the United States since his admission at Philadelphia, Pennsylvania, on March 11, 1947.

3. Affiant further says that the plaintiff had never applied for or been granted an extension of this temporary period of admission and has never been admitted to the United States for permanent residence. The record which is attached and made a part of the answer in the above captioned matter reflects that the plaintiff failed to furnish notification of his change of address during January 1953 and January 1954 or other information in compliance with the provisions of Section 265 of the Immigration and Nationality Act of 1952.

4. Plaintiff did not establish to the satisfaction of the Attorney General that his failure to furnish the afore-
[fol. 37] mentioned information was reasonably excusable or was not willful.

The record clearly shows that plaintiff is subject to deportation under the provisions of Section 241(a)(5) of the act of 1952.

5. Defendant further says that there is a genuine issue of fact, to-wit: the failure of the plaintiff to furnish notification of his address for the year 1953 and January 1954 as provided for in Section 265 of the Immigration and Nationality Act of 1952 will render the alien deportable under Section 241(a)(5) of said act, 1. If the plaintiff's failure to notify the Attorney General as required by the aforesaid act was intentional, 2. Was there sufficient justi-

fication for the plaintiff's failure to notify the Attorney General as required by the aforesaid act, and 3. Was the failure by the plaintiff to notify the Attorney General as required by the aforesaid act accidental or involuntary.

Affiant states these are genuine issues of fact which are to be determined from the deportation record which has been attached to and made part of the Answer filed in the above captioned cause.

6. Affiant further says that plaintiff's application for suspension of deportation under the Immigration and Nationality Act of 1952 must be considered under Section 241(a)(5).

7. Affiant further says that the motion for summary judgment should be dismissed.

[fol. 38] Further affiant sayeth not.

/s/ Anthony S. Battaglia, Assistant U. S. Attorney.

Sworn to and subscribed to before me this 9th day of May, 1955.

/s/ Anna R. Alexander, Notary Public, State of Florida at large.

(Notary Seal.)

My commission expires March 29, 1958.
Bonded by American Surety Co. of N. Y.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

[Title omitted]

STIPULATION OF COUNSEL—Filed January 11, 1956

It Is Hereby Stipulated and Agreed by and between counsel for the respective parties hereto that, since it is

apparent that the above-styled case may be resolved on an administrative basis, this case should be removed from [fol. 39] the trial docket and set over until the next trial calendar, trial having been set for January 9, 1956, at 9:30 A.M.

Dated at Miami, Florida, this 4th day of January, A. D. 1956.

Walters, Moore & Costanzo, Attorneys for Plaintiff, by /s/ David W. Walters.

James L. Guilmartin, United States Attorney, by /s/ E. David Rosen.

IN UNITED STATES DISTRICT COURT

ORDER REMOVING CASE FROM TRIAL DOCKET—January 9, 1956

This Cause having come on for hearing upon stipulation by and between counsel for the respective parties hereto that the above-styled cause be removed from the trial docket and set over until the net trial calendar, it seeming apparent that the matter may be resolved on an administrative basis; and the Court being fully advised in the premises, it is

Ordered that the above case be removed from the present trial docket and set over until the next trial calendar.

[fol. 40] Done and Ordered in Chambers at Miami, Florida, this 9th day of January, A. D. 1956.

Emett C. Choate, United States District Judge.

IN UNITED STATES DISTRICT COURT

GOVERNMENT'S EXHIBIT No. 1—Filed July 9, 1956

United States Department of Justice.
Immigration and Naturalization Service.
Seattle

September 1, 1954

File: 1200-54817

In re: Gerys Dessalernos

In Deportation Proceedings.

In Behalf of Respondent:
Jeffrey Heiman
Attorney at Law
1411 4th Avenue Bldg.,
Seattle, Washington

Charges:
Warrant: I & N Act—Seaman, failed to comply with conditions of admission.

Lodged: I & N Act—Failure to furnish notification of address and other information.

Detention Status:
Released on bond.

[fol. 41] Application:
Suspension of deportation.

Warrant of Arrest Served:
June 28, 1954.

Discussion:

This record relates to a 43 year old single male, a native and citizen of Greece, who last entered the United States at Philadelphia, Pennsylvania, on March 11, 1947 on the SS Aristocratis. This entry has been verified. At the time of his last entry, respondent was examined and admitted as a seaman under Section 3(5) of the Immigration Act of 1924, for 29 days, by an immigration officer. Respondent

was discharged from the vessel on March 14, 1947 and has remained continuously in the United States since. He has never applied for or obtained any extension of his stay in the United States from an immigration officer. Respondent testified that, at the time of his admission, it was his intention to visit a brother in Miami, Florida and then re-ship foreign. He has not departed the United States in compliance with the conditions of his admission. The charge contained in the warrant of arrest is sustained.

Respondent was questioned regarding his compliance with the provisions of Section 265 of the Immigration and Nationality Act during the months of January 1953 and January 1954. He testified that he had not submitted the registration reports required by law because he was afraid, if he did so, that he would be apprehended by the Service and deported. He testified that he knew of the requirement and had submitted a report in January 1952. This report [fol. 42] lead to inquiries from the Immigration Service and in 1953 he fled Miami, Florida, where he was living, for fear of apprehension. Respondents testimony was responsive to the questions addressed to him and was direct and unevasive. The charge was therefore lodged that respondent was deportable for failure to furnish notification of address and other information required by Section 265 and such failure was not reasonably excuseable or not wilful. Counsel requested additional time to prepare a defense on this lodged charge and the hearing was continued to a date mutually agreeable. During the course of the continued hearing respondent attempted to rationalize his failure to report and establish that his conduct was not wilful and was reasonably excuseable. On cross-examination respondent, however, reaffirmed his testimony given prior to the continuance. His testimony amply supports the conclusion that he failed to furnish notification of address for fear of apprehension. Fear of apprehension is not a reason that establishes failure to report as reasonably excuseable or not wilful (Interim Decision #438, Matter of M.). The lodged charge is sustained.

Respondent has submitted an application for suspension of deportation. The record establishes that he meets the good moral character requirement. He is single and has

no one in the United States dependent upon him for support. He does not meet the requirement that his deportation result in exceptional and extremely unusual hardship to himself. While it is recognized that hardship will result, it would not be so exceptional and extremely unusual as to make his deportation unconscionable. Further, as respondent is deportable on a charge enumerated in Section 244(a) [fol. 43] (5) of the Immigration and Nationality Act, he must meet the requirement of that section for suspension of deportation. As he does not have the ten year physical presence in the United States specified by that section he is not eligible for suspension of deportation. Suspension of deportation is denied.

As respondent is deportable under one of the sections enumerated under Section 244(e) and is not eligible for suspension of deportation under Section 244(a)(5) he is not eligible for voluntary departure.

Findings of Fact.

Upon the basis of all the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of Greece;

(2) That the respondent last entered the United States March 11, 1947 at Philadelphia, Pennsylvania;

(3) That at the time of his last entry respondent was admitted as a seaman for a period not to exceed 29 days;

(4) That the respondent has not departed the United States in accordance with the terms of his admission;

(5) That respondent failed to furnish notification of his address in January 1953 and January 1954 and such failure was not reasonably excuseable or not wilful.

[fol. 44]. Conclusions of Law.

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under Section 241(a)(9) of the Immigration and Nationality Act, the respondent is deportable in that,

after admission to the United States as a non-immigrant, to wit, a seaman, under section 3(5) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

(2) That under Section 241(a)(5) of the Immigration and Nationality Act, the respondent is deportable in that, he has failed to furnish notification of his address or other information in compliance with the provisions of Section 265 and has not established that such failure was reasonably excuseable or was not wilful.

ORDER:

It is ordered that the alien be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest and on the lodged charge.

George S. Dailey, Special Inquiry Officer.

[fol. 45] IN UNITED STATES DISTRICT COURT

FINAL JUDGMENT—July 10, 1956

This cause having come on for trial without jury and it having been stipulated orally before the Court by the Attorney for the Plaintiff and the Assistant U. S. Attorney that there was no issue of fact to be tried by the Court and that the facts as found by the Board of Immigration Appeals and the Special Inquiry Officer during the course of the administrative proceedings, of which this case sought a review, correctly stated the true factual situation, and there having been introduced into evidence the order of the Board of Immigration Appeals and the order of the Special Inquiry Officer and the transcript of the hearing before the Special Inquiry Officer on which the latter order was based, and it having been further orally stipulated before the Court that the sole question to be decided by the Court was to wit:

Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244

(a)(5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from presenting for consideration his application for suspension of deportation under section 244(a)(1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?

and the Court having heard argument of counsel, and the Court being of the opinion that the above question should be answered in the affirmative and that the plaintiff, by [fol. 46] reason of his being admittedly deportable under section 241(a)(5) of the Immigration and Nationality Act, is not entitled to consideration of his application for suspension of deportation under section 244(a)(1) of the Immigration and Nationality Act and must rely on section 244(a)(5) of said Act exclusively, and the Court being otherwise fully advised in the premises, it is upon consideration,

Ordered and Adjudged that the Board of Immigration Appeals was correct in its interpretation of the law applicable to this case, that the deportation order against the plaintiff was properly entered, and that the plaintiff is statutorily ineligible for suspension of deportation under the provisions of section 244(a).

Done and Ordered at Miami, Dade County, Florida, this 10 day of July, 1956.

George W. Whitehurst, U. S. District Judge.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed July 12, 1956

Notice Is Hereby Given that Gerys Dessalernos, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order of the District Court of the United States for the Southern District of Florida, Miami Division, heretofore filed by

[fol. 47] plaintiff, entered by said Court in this action on the 11th day of July, 1956.

/s/ David W. Walters, Attorney for Plaintiff.

(Certificate of service.)

IN UNITED STATES DISTRICT COURT

STIPULATION OF COUNSEL—Filed July 13, 1956

It Is Hereby Stipulated between David W. Walters, counsel for plaintiff, and James L. Guilmartin, United States Attorney, counsel for defendant, that during the pendency of the above-styled cause before the United States Court of Appeals for the Fifth Circuit, and until final order or appeal, the plaintiff will not be removed by the defendant from the jurisdication (sic) of the United States District Court for the Southern District of Florida, Miami Division.

Dated the 12th day of July, A. D. 1956.

/s/ David W. Walters, Attorney for Plaintiff.

James L. Guilmartin, United States Attorney, by /s/ Richard R. Booth, AUSA, Attorney for Defendant.

[fol. 48] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING ORDER FOR PRELIMINARY INJUNCTION—July 12, 1956

Upon consideration of the stipulation entered into between counsel for the plaintiff and defendant, and it appearing that the deportation of the plaintiff during the pendency of the appeal would cause him to suffer irreparable damage, it is

Ordered, Adjudged and Decreed that the outstanding order for preliminary injunction dated March 1, 1955, be continued in full force and effect pending a final disposition

of this cause and appeal, or until further order of this Court.

Done and Ordered in Chambers, this 12th day of July, 1956.

Emett C. Choate, Judge.

CLERK'S NOTE

As to Item 16 of the Designation, being Motion to extend time for perfection of record; said motion was filed in the United States Court of Appeals and not in this Court.

[fol. 49] IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GERYS DESSALERNOS, Miami, Florida, Appellant,

v.

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida, as Agent for HERBERT BROWNELL, Attorney General of the United States, Appellee.

Appeal from the United States District Court for the Southern District of Miami.

Before Hutcheson, Chief Judge, and Rives and Brown, Circuit Judges.

ORDER OF UNITED STATES COURT OF APPEALS EXTENDING TIME TO FILE RECORD IN APPELLATE COURT—September 14, 1956

By the Court:

It Is Ordered by the Court that the time for filing the transcript of record in the above entitled cause in this Court be extended for a period of thirty days from September 12, 1956.

A true copy.

Test:

John A. Feehan, Jr., Clerk, U. S. Court of Appeals, Fifth Circuit.

(Seal)

New Orleans, Louisiana, September 14, 1956.

[fol. 50] IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD—Filed September 18, 1956

Comes now David W. Walters, Attorney for Gerys Dessalernos, plaintiff herein, and respectfully designates the portion of the record on file in this cause in the office of the Clerk of the District Court of the United States for the Southern District of Florida, Miami Division to be transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit, and requests the Clerk of the Court to which this designation is directed to make up a transcript for such purpose, composing such transcript of the following:

1. A true copy of the complaint.

2. A true copy of motion for preliminary injunction.

3. A true copy of notice of hearing.

4. A true copy of order granting preliminary injunction.

5. A true copy of motion for summary judgment, including the attached affidavit and exhibit.

6. A true copy of notice of hearing on motion for summary judgment.

7. A true copy of the answer, including all exhibits thereto attached.

[fol. 51] 8. A true copy of affidavit in opposition to motion for summary judgment.

9. A true copy of the stipulation.

10. A true copy of the order dated January 9, 1956.

11. A true copy of the final judgment.

12. A true copy of the notice of appeal.

13. A true copy of stipulation dated July 12, 1956.

14. A true copy of order dated July 12, 1956.

15. A true copy of the Government's Exhibit "1" being a transcript of deportation proceedings in Seattle on September 1, 1954 filed in evidence.

16. A true copy of motion to extend time for perfection of record.

17. A true copy of order extending time to perfect record.

18. A true copy of designation of contents of record on appeal.

/s/ David W. Walters, Attorney for Plaintiff.

Miami, Florida, September 17, 1956.

(Certificate of mailing.)

[fol. 52] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 53] In United States Court of Appeals

[Title omitted]

Minute Entry of Submission—March 14, 1957

On this day this cause was called and, was taken under submission by the Court upon the record and briefs on filed (sic), on joint request of counsel.

[fol. 54] IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16340

GERYS DESSALERNOS, Appellant,

v.

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

OPINION—April 22, 1957

Before Tuttle, Jones and Brown, Circuit Judges.

Tuttle, Circuit Judge: This is an appeal from a judgment in an action to review a determination of the Board of Immigration Appeals by which the district court held that appellant is subject to deportation and is statutorily ineligible for waiver of deportation.

[fol. 55] The undisputed facts are that appellant is an alien, a native and a citizen of Greece, who last entered the United States on March 11, 1947, as a seaman on a Certificate of Admission permitting a stay of not over 29 days; no extension has ever been applied for or granted. In 1952 appellant registered for the first and only time under the provisions of the Alien Registration Act,[1] and he has since failed to file the annual registration required by 8 U.S.C.A. §1305. The Special Inquiry Officer determined, and the Board of Immigration Appeals and the district court

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[1] 8 U.S.C.A. §1302, formerly 8 U.S.C. §452 (1946 ed.).

agreed, and appellant does not dispute, that the failure to register was willful and without reasonable excuse.

Appellant is thus deportable both as a nonimmigrant who has failed to comply with the conditions of that status, 8 U.S.C.A. §1251(a)(9), and as an alien who has failed to comply with the provisions of the Alien Registration Act, 8 U.S.C.A. §1251(a)(5). The only issue is whether appellant's application for suspension of deportation should be treated as falling under section 1254(a)(1) of the Title under which he could qualify for discretionary relief by the Attorney General,[2] or under section 1254(a)(5), under [fol. 56] which he cannot qualify.[3]

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[2] §244(a)(1) of the Immigration and Nationality Act of 1952, 8 U.S.C.A. §1254(a)(1), provides as follows:

"§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

"(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

. . . . ."

The application for suspension was filed on August 10, 1954, more than seven years after appellant's entry; the failure to register annually as required by law would apparently not automatically make him a person not "of good moral character" as that term is defined by 8 U.S.C.A. §1101(f), nor would it make him ineligible for suspension of deportation under the now repealed provisions of §19(d)

Appellant contends that since he qualifies under one category established by section 1254(a) his application for [fol. 57] suspension should be considered under that paragraph, even though he is ineligible under another category whose provisions are applicable to his situation but whose requirements he fails to meet. In particular, appellant argues that Congress, in drafting the 1952 Act, had wished to preserve the right of all aliens whose last entry had occurred before June 27, 1950, (two years prior to date of enactment of the Act) to apply for suspension of deportation under substantially the provisions and standards of the pre-1952 law, as long as they filed their application at any time before December 31, 1957 (five years after the effective date of the chapter). To support this proposition he points to the provisions of the Act, in which, as detailed below, a generally clear distinction is indeed made, in sev-

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of the Immigration Act of 1917, as amended (formerly 8 U.S.C. §155(d) (1946 ed.)), which read as follows:

"§155. Deportation of undesirable aliens generally.

. . . .

"(d) The provisions of subsection (c) [permitting suspension of deportation] shall not be applicable in the case of any alien who is deportable under (1) section 137 of this title; (2) section 175 of Title 21; (3) section 156a of this title; (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section."

None of the cited exclusions include the failure of an alien to register as required by law; see footnote 6, infra.

[3] §244(a)(5) of the Act, 8 U.S.C.A. §1254(a)(5), provides in part as follows:

"§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

. . . .

"(5) is deportable under paragraphs (4)-(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title for an

eral paragraphs listed in the disjunctive, between those aliens who entered before and those who entered on or after June 27, 1950; in addition he refers us to the report of the Senate Judiciary Committee which first considered these provisions, which stated:

> "The subcommittee recommends that the present suspension of deportation provisions of the law be [fol. 58] abolished within 5 years and that no alien who entered the United States within a period of 2 years prior to the enactment of the proposed legislation shall be eligible under the present suspension provision of the law, as modified."[4]

and then continued with its recommendations for the altered provisions of the new law.

The Government argues, in effect, that the provisions are meant to be mutually exclusive, and that since paragraph (5) refers specifically to the situation of the appel-

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act committed or status acquired subsequent to such entry into the United States or having last entered the United States, within two years prior to, or at any time after June 27, 1952, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

Appellant of course has not been a resident of the United States for 10 years since his last failure to register in January 1954, which is an "act" that makes him liable to deportation under §1251(a)(5).

[4] "Report of the Senate Committee on the Judiciary pursuant to S.Res. 137," S.Rep. No. 1515, 81st Cong., 2nd Sess., April 20, 1950.

lant, i.e. to one who violated the Alien Registration Act, while paragraph (1) only refers generally to aliens "deportable under any law of the United States," under the usual rules of statutory construction he must be treated as a member of the "particular class" into which he falls. *Baltimore National Bank* v. *State Tax Commission of Maryland*, 297 U.S. 209, 215; 82 C.J.S., Statutes §347(b).

The question raised is unfortunately not as easily resolved as each of the parties would have it; as in many cases under this Act the courts must resort to a close study of the complex interrelation of the several provisions of both the present and the former law, both internally and, as required by the frequent crossreferences, with each other. On this particular narrow issue there appear to be no cases to guide us[5] nor has any legislative history more [fol. 59] helpful than the general language quoted above been called to our attention. To arrive at the most reasonable construction it will therefore be necessary to examine the entire background and pattern of the pertinent sections.

Prior to 1940 there was no statute under which relief from deportation could be granted, and in general such aid could only be secured by means of a private bill in Congress. By the Alien Registration Act of 1940 the Attorney General was given discretionary authority to suspend deportation of aliens not guilty of any major misbehavior, defined by excluding from the relief provision aliens who fell into any of a number of listed categories of undesirables, upon a showing of good moral character for five years and of the threat of serious economic detriment to any legally resident, close relative of the alien, unless Congress passed a concurrent resolution disapproving of such a suspension. 54 Stat. 671, 8 U.S.C. §§155(c),(d)(1946 ed.). In 1948 the provision was changed by *also* permitting the suspension of deportation of aliens not in the excluded categories upon a mere showing of seven years residence (regardless of considerations of hardship to them or to their families), but requiring that in *all* cases of suspension

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[5] See, however, the just reported district court case, Sevitt v. Del Guerico (S.D.Cal.), ___ F.Supp. ___ (25 U.S.L.W. 2449), which reaches a result contrary to ours below.

Congress pass an affirmative concurrent resolution approving the stay. 62 Stat. 1206, 8 U.S.C. §155(c) (1946 ed., Supp. 11, 1949).

The 1952 Act completely recast the former suspension provisions. Five general categories of aliens were designated by successive paragraphs of 8 U.S.C.A. §1254(a): (1) those whose "offense" did not disqualify them for [fol. 60] suspension under the former Act (referred to as §19(d) of the Immigration Act of 1917, as amended), who had entered the United States, properly or improperly, before June 27, 1950, and who prior to their application for suspension of deportation had resided here for at least seven years and had maintained a good moral character; (2) those whose deportability arises from some circumstance existing at or before their entry, but not involving any major misbehavior or improper entry (defined by excluding those aliens falling into category (4)), whose entry was subsequent to June 26, 1950, and who have maintained at least five years of residence with good moral character up to the time of application; (3) those whose situation is similar to that of category (2) except that their deportability arises from circumstances after entry; (4) those whose deportability arises either from an improper entry or from major misbehavior before entry, who entered after June 26, 1950, and who have maintained at least ten years of residence with good moral character; (5) those whose deportability arises either from overstaying their permitted time in the United States or who belong in one of eleven enumerated categories of major undesirables (based generally on post-entry activities), regardless of their date of entry, who have maintained at least ten years of residence with good moral character. In all categories suspension may only be effected if deportation would "result in exceptional and extremely unusual hardship" to the alien or to a legally resident close relative.[6] Also, in suspensions under paragraphs (1)-(3) the relief may be granted unless disap- [fol. 61] proved by a concurrent resolution of Congress,

[6] This requirement was intended to be harsher than that in the former statutes. See S. Rep. No. 1137, 82nd Cong., 2nd Sess., quoted in 8 U.S.C.A. §§1-1280 at 67-68.

while under paragraphs (4) and (5) an affirmative resolution is required to make the stay permanent.

In general the pattern of the new Act is thus clear: it continues in general terms and for a limited period the category of those who might seek suspension of deportation under the former Act, provided the alien entered before June 27, 1950, substituting, however, a uniform seven years residence with good moral character requirement and the harsher "hardship" provision of the new Act, and restoring the pre-1948 requirement of a mere absence of congressional disapproval. In general aliens in similar circumstances who entered after June 26, 1950, can now qualify for suspension after five years of residence under the provisions of paragraphs (2) and (3), except if their entry was improper, in which case they fall under the ten year requirement of paragraph (4), or if their deportability arises by reason of failure to register (§1251(a)(5)) or because of violation of war emergency laws (§1251(a)(17)) in which case the ten year requirement of paragraph (5) applies. In addition, practically all aliens whose deportation could not have been suspended at all under the former Act may now qualify after ten years under the provisions of paragraphs (4) and (5). Also the racial eligibility provision of the former Acts has been removed, but additional restrictions are imposed on citizens of contiguous countries. It thus appears that Congress very thoroughly reshaped the statute, easing the requirements somewhat by reducing the qualifying time in some instances, eliminating the need for positive congressional approval in many situa-
[fol. 62] tions, and in making it possible for some persons to qualify for deportation after ten years of reputable residence and subject to positive congressional approval who could not have qualified at all under the former law; on the other hand requirements were made more severe in other ways, by adopting a rather stricter "hardship" test and by changing the five or seven year requirement to ten for those guilty of certain offenses—including the failure to register under the Alien Registration Act. Even with respect to the pre-June 27, 1950, category changes were made, including the imposition of the uniform seven years residence with good moral character, the new "hardship"

clause, and the December 31, 1957, terminal date for application. It cannot be said that the provisions as a whole are meant to be generally more or less restrictive than the former ones; all that can be said is that they appear to be more selectively drawn. Nor can it be said that there was an apparent congressional intent to preserve inviolate all the rights under the former statutes of the pre-June 27, 1950, category.

It should also be noted that for the most part the categories are mutually exclusive.[7] Apparently practically the

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[7] Paragraph (1) excludes all those in paragraphs (2)-(4) and part of paragraph (5) by means of the June 27, 1950, cut-off date; paragraph (2) deals with deportability arising from circumstances at or before entry, while paragraph (3) explicitly and paragraph (5) implicitly deals with those arising from post-entry circumstances; both paragraph (2) and (3) explicitly exclude aliens falling into paragraph (4) and paragraph (3) also explicitly excludes those falling into paragraph (5); the provisions of paragraphs (4) and (5) are also explicitly or implicitly mutually exclusive; paragraph (5) in its principal part lists eleven grounds of deportability to which it applies, nine of which match exclusions under the former act which are now incorporated into paragraph (1), and one inclusion in paragraph (4) similarly matches one more exception to paragraph (1):

§19(d) of the 1917 Act, as amended, 8 U.S.C. §155(d) (1946 ed.) (quoted in footnote 2, supra) includes the following exceptions, which may be matched as follows with the inclusions in paragraphs (4) and (5):

Exclusions from paragraph (1) (all references to former sections of Title 8)	Inclusions in paragraphs (4) and (5) (All references to present sections of Title 8)
§155(d)(1) referring to §137: anarchists, subversives, etc.	§1251(a)(7)*
§155(d)(2) referring to 21 U.S.C.A. §175: importing narcotics	§1251(a)(11)*
§155(d)(3) referring to §156a: trading in narcotics	§1251(a)(11)*
§155(d)(4) referring to §155(a): excludable at time of entry	§1251(a)(1)**
anarchists, subversives, etc.	§1251(a)(7)*

[fol. 63] only clear breakdown in that separation involves the very provision here under consideration: deportability due to failure to register, 18 U.S.C.A. §1251(a)(5), which was not an offense precluding suspension of deportation under the former Act, and which thus does not explicitly [fol. 64] preclude the applicability of paragraph (1) relief under the present Act, but which is specifically listed as included in category (5).

It is certainly clear that Congress in 1952 took a much more serious view of the failure to register than had former legislatures; it is one of the few provisions in which suspension of deportation was made distinctly more difficult

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conviction of crime involving moral turpitude	§1251(a)(4)*
prostitution, white slavery, etc.	§§1251(a)(12), * (18)*
§155(d)(5) referring to §155(b):	
aiding other aliens to enter illegally	§1251(a)(13)***
conviction of possessing automatic weapon	§1251(a)(14)*
conviction of subversion within 5 years of entry	§1251(a)(15)*
more than one conviction of subversion	§1251(a)(16)*

* included in paragraph (5)
** included in paragraph (4)
*** not included in any paragraph (thus no suspension possible).
(All cross-references taken from cross-reference table, 8 U.S.C.A. xxv-xxx.)

§§1251(a)(2) (entry in violation of law) is apparently the only offense *included* in paragraph (4) which was not *excluded* from paragraph (1) relief (though the offense of illegal entry is listed in former §155(a) it is not an exclusion under §155(d)(4) because it does not relate to "criminals, prostitutes, procurers, or other immoral persons, the mental-prostitutes, procurers, or other immoral persons, the mentally or physically deficient, anarchists, and similar classes")—but the date of the entry determines positively into which category an alien falls. Similarly §§1251(a)(5) (failure to register) and (17) (conviction of violation of war emergency and security laws) are the only offenses *included* in category (5) which are not *excluded* from paragraph (1) relief except insofar as §1251(a)(17) overlaps §§1251(a)(4), (15), (16). Only to this extent is there a breakdown in the mutual exclusiveness of the categories.

(at least for aliens who entered after June 26, 1950) than it had been under the former law, and no liberalizing features have been added. The principal other offense for which this is true is the offense of illegal entry, §1251(a)(2), which, like failing to register, makes control over the alien more difficult and simplifies the offender's problem of avoiding investigation during the qualifying period. In addition aliens who aid others to enter illegally, §1251(a)(13), are entirely precluded from seeking suspension of deportation, thus suggesting that Congress intended to penalize through the immigration laws those who violated them.

In the case of improper entry the Act is clear that only entries subsequent to June 26, 1950, shall be subject to the more severe suspension requirements, for the applicable paragraph is (4) which includes the cut-off restriction, rather than (5), which does not. For failing to register [fol. 65] the more severe conditions clearly apply to aliens entering after June 26, 1950, for they are not covered at all by paragraph (1). It would therefore be highly anomalous for Congress, having expressed the more severe view it now takes of the offense of failure to register, to permit certain persons who violate the registration provisions of the new Act after its passage (e.g., as here, in 1953 and 1954) to receive more consideration than others who are guilty of precisely the same omission at precisely the same time, merely because the former entered the United States earlier than the latter. Such might be the result where both the entry and the offense occurred before the enactment of the new Act (or before the cut-off date two years earlier), but in the present situation, where the new Act gave notice of the more severe consequences of a failure to comply and compliance was still not forthcoming, such a construction is not reasonable. Congress should not be thought to have created two categories of aliens, distinguishable only by their date of entry, whose improper behavior carries different consequences. In view of the above, and in view also of the apparent congressional intent to make the five categories of §1254(a) mutually exclusive, we must hold that the explicit inclusion in category (5) of deportability for failure to register implicitly excludes it from category (1).

The judgment of the district court is Affirmed.

[fol. 66] IN UNITED STATES COURT OF APPEALS

No. 16340

GERYS DESSALERNOS,

v.

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida.

JUDGMENT—April 22, 1957

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fol. 67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES

No. 287—October Term, 1957

[Title omitted]

ORDER ALLOWING CERTIORARI—October 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.